

BRADLEY W. WILSON,	)	
	)	PCHB NO. 93-25
Appellant,	)	
	)	
v.	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
PUGET SOUND AIR POLLUTION	)	AND ORDER
CONTROL AGENCY,	)	
	)	
Respondent.	)	

Witnesses were sworn and testified. Exhibits were examined. From the testimony heard and exhibits examined, the Board makes these

07/27/93

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2 **FINDINGS OF FACT**

3 **I**

4 On March 31, 1992, at 11 45 a.m. the Puget Sound Air Pollution Control Agency  
5 (PSAPCA) received a complaint that the resident at 10427-248th Avenue NE, Redmond,  
6 Washington was spray painting a vehicle outdoors and fumes were impacting neighboring  
7 properties.

8 **II**

9 At 12:25 p.m. the same day, March 31, 1992, PSAPCA received a telephone call that  
10 the resident of 10427 - 248th Avenue NE was conducting an uncontrolled spray paint operation  
11 to a vehicle outdoors.

12 **III**

13 Richard J. Pogers, PSAPCA air pollution inspector reviewed the paperwork on the two  
14 complaints at 12:30 p.m., considering the incident as a potential public health risk. He  
15 telephoned the King County Fire Marshal's office for assistance, and was transferred to Jeff  
16 LaFlam, Deputy Fire Marshal in the area, who offered to respond to the incident.

17 **IV**

18 Inspector Pogers requested Deputy Fire Marshal LaFlam to have the painting stopped,  
19 and to get name, relevant report information and to take possible photographs for  
20 documentation.

21 **V**

22 At 3.29 p.m., LaFlam telephoned Pogers that the appellant had been contacted by the  
23 Fire Marshal and was told to stop spray painting. Two photos were taken by LaFlam, one of  
24 the truck being painted, and wider view of the incident area and house residence.

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2 VI

3 Deputy Fire Marshal LaFiam told Inspector Pogers that the appellant Bradley Wilson.  
4 clearly understood that he could not do any open, uncontrolled spray painting. The Fire  
5 Marshal also told Mr. Wilson that a representative of Puget Sound Air Pollution Control  
6 Agency would visit and explain the spray painting regulations in more detail.

7 VII

8 On April 2, 1992 at 4:10 p.m. PSAPCA received a telephone call from a third  
9 complainant that spray painting was being conducted at 10427-248th Avenue NE on a vehicle  
10 outdoors.

11 VIII

12 The next day, April 3, 1992, Inspector Pogers and another PSAPCA inspector, drove  
13 to 10427-248th Avenue NE and met with Mr. Wilson, appellant. Mr. Wilson was provided a  
14 copy of the spray paint regulation, Section 9.16 Mr. Wilson said that he had not painted  
15 since the Fire Marshal had come out on March 31, 1992. Three photos were taken during the  
16 interview, and Mr. Wilson was told that if the photos were different in comparing the painted  
17 truck, a Notice of Violation would be issued.

18 IX

19 Mr. Pogers told Mr. Wilson that the best available control technology for spray  
20 painting would be to include use of tarps and high volume, low pressure spray guns to reduce  
21 paint overspray.

22 X

23 At 12.45 p.m. on April 3, 1992, Inspectors Pogers and his accompanying inspector left  
24 10427-248th Avenue NE and drove to the address of the third complainant. Mr. Pogers spoke  
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1 to the third complainant in person, who told him there was a red cloud of paint extending  
2 across 248th Avenue from the spray painting that was occurring on April 2, 1992.  
3

4 XI

5 Someone had also painted a house trailer. The appellant has a business doing  
6 commercial signs at his address.

7 XII

8 Deputy Fire Marshal LaFlam gave a notarized statement that he had taken two photos  
9 on March 31, 1992, one showing that there was yellow paint on the engine fire wall, and a  
10 third photo taken April 3, 1992 by Inspector Pogers shows the same fire wall completely  
11 painted

12 XIII

13 A Notice of Violation No. 2834 was sent to Mr. Wilson April 20, 1992, by Certified  
14 Mail for violations of Section 9.12(b) Odor and Nuisance Control Measures, and Section  
15 9.16(a), Spray Coating Operations and were identified and received by Mr. Wilson on April  
16 22, 1992.

17 XIV

18 Four months later, on August 24, 1992, PSAPCA sent a Notice and Order of Civil  
19 Penalty No. 7631 for \$3,000 citing Section 9.16(a) of Regulation I, which states: "It shall be  
20 unlawful for any person to cause or allow the use of spray equipment to apply any VOC-  
21 containing material, including any negligibly reactive compound, unless the operation is  
22 conducted inside an enclosed spray area that is registered with the Agency and incorporated  
23 either dry filters or water wash curtains to control the overspray or the use of another  
24 technique that has received the prior written approval of the Control Officer. The exhaust  
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1 from the spray area shall be vented to the atmosphere through a vertical stack or through the  
2 use of another technique that has received the prior written approval of the Control Officer."

3  
4 **XV**

5 The exact amended penalty order carried this description:

6 Caused or allowed the use of spray equipment to apply a VOC-  
7 containing material in an unenclosed area, not registered with the  
8 Agency, and incorporating neither dry filters, nor water wash  
9 curtains to control overspray at 10427 -284th Avenue NE in  
Redmond, Washington.

10 **XVI**

11 The Pollution Control Hearings Board of Washington State recognizes Regulations I, II  
12 and III of Puget Sound Air Pollution Control Agency, in which definitions include.

13 **VOLATILE ORGANIC COMPOUND or VOC** means any organic compound  
14 that participates in atmospheric photochemical reactions. This excludes all  
15 compounds determined to have negligible photochemical reactivity by the U.S  
Environmental Protection Agency and listed in 40 CFR 51.100(s).

16 **XVII**

17 Neither Fire Marshal LaFlam nor Inspector Pogers actually saw Mr. Wilson spray  
18 painting.

19 **XVIII**

20 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such  
21 From these Findings of Fact, the Board issues these:  
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## CONCLUSIONS OF LAW

### I

The Board has jurisdiction over these persons and these matters. Chapter 43.21 and 70.94 RCW.

### II

Under terms of Section 9.16 Spray Coating Operations of PSAPCA Regulation I, certain air emissions are prohibited. This sections reads as follows.

(a) It shall be unlawful for any person to cause or allow the use of spray equipment to apply any VOC-containing material, including any negligibly reactive compound, unless the operation is conducted inside an enclosed spray area that is registered with the Agency and incorporates either dry filters or water wash curtains to control the overspray or the use of another technique that has received the prior written approval of the Control Officer. The exhaust from the spray area shall be vented to the atmosphere through a vertical stack or through the use of another technique that has received the prior written approval of the Control Officer.

The provisions of Section 9.16 became effective January 1, 1992.

### III

RCW 90.94 deals with air pollution in Washington state, and any violations of these state laws, and lists penalties:

70 04.430 Penalties. (1) Any person who knowingly violates any of the provisions of chapter 70.94 or 70.120 RCW, or any ordinance, resolution, or regulation in force pursuant thereto shall be guilty of a crime and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both for each separate violation

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2 IV

3 We conclude that the appellant violated Section 9.16(a) of PSAPCA Regulation I  
4 Between March 31, 1992 and April 2, 1992, spray painting was conducted at 10427-248th  
5 Avenue NE, Redmond, on a vehicle outdoors.

6 V

7 The Washington Clean Air Act 70.94 RCW is a strict liability statute, and acts  
8 violating its implementing regulations (here, PSAPCA Regulation I) are not excused on the  
9 basis of intent or lack thereof. Pearson Construction v. PSAPCA, PCHB No 88-186 (1989)

10 VI

11 PSAPCA's Regulation I and the Washington State Clean Air Act provide for a  
12 maximum civil penalty of \$10,000 per day in occurrences of this kind. Purpose of a civil  
13 penalty is not primarily punitive, but rather to influence behavior. We therefore conclude that  
14 the Order set forth below is appropriate.

15 VII


16 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

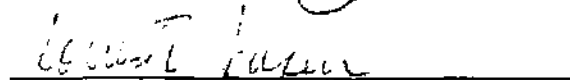
17 From the foregoing, the Board issues this:  
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2 **ORDER**

3 Notice and Order of Civil Penalty No. 7631 issued by PSAPCA of \$3,000 is affirmed  
4 DONE this 27<sup>th</sup> day of July, 1993.

5 **POLLUTION CONTROL HEARINGS BOARD**

6   
7 HAROLD S. ZIMMERMAN, Presiding

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9 ROBERT V. JENSEN, Attorney Member

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11 RICHARD C. KELLEY, Member  
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